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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/095,323	06/10/1998	MICHAEL D. LAUFER	ASTXNA00100	9521
65025	7590	07/11/2007		
ASTHMATX, INC. c/o LEVINE BAGADE HAN, LLP 2483 EAST BAYSHORE ROAD SUITE 100 PALO ALTO, CA 94303			EXAMINER SHAY, DAVID M	
			ART UNIT 3735	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary

Application No.

09/095,323

Applicant(s)

LAUFER, MICHAEL D.

Examiner

david shay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 3, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-37, 50 and 52-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-37, 50 and 52-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>April 3, 2007</u> . | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 3, 2007 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31, 33, 36, 50, 52, and 53 are rejected under 35 USC 103 a, as being unpatentable over Regulla et al. Regulla et al teach inhibiting smooth muscle growth by using radiation to reduce constrictions in lumens such as bronchi. It would have been obvious to the artisan of ordinary skill to use the method of Regulla et al to treat a tumor near an asthmatic patient's bronchial system, thus producing a method such as claimed.

Claims 29, 32-34, 37, 50, and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al. James et al teach that the mechanisms involved in airway narrowing in asthma include hypertrophy of smooth muscle. Regunathan et al teach that restenosis is a result of hypertrophy of smooth muscle cells. Clarke (US '033) teaches that restenosis can be treated by irradiation of the lumen wall with lasers radiation having wavelengths in the claimed ranges to prevent the replication and growth of smooth muscle cells. It would have been obvious to the artisan of ordinary skill use the method of Clarke (US '033) for treating asthma, since both asthma and restenosis involve hypertrophy of smooth muscle cells, as taught by James et al and Regunathan

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et al, and to move the device while irradiating, since this would allow the treatment longer lesions, thus producing a method such as claimed.

Claims 30 and 35 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Vincent et al. Vincent et al teach the desirability of treating proliferation of smooth muscle cells with irradiation with red light. It would have been obvious to the artisan of ordinary skill to employ irradiation with red light in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this helps prevent smooth muscle cells from forming luminal occlusions, thus producing a method such as claimed.

Claims 52-55 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Lax et al. Lax et al teach the desirability of employing a painting motion and the use of an endoscope when performing volume reduction procedures on tissue. It would have been obvious to the artisan of ordinary skill to employ a painting motion and endoscopic visualization in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this would allow even disposition of energy and visualization of the treatment site, respectively, thus producing a method such as claimed.

Claims 60-62 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Robinson et al and Levenson et al. Robinson et al teach the use of furocoumarin to prevent excess proliferation of smooth muscle cells. Levenson et al teach that furocoumarins include psoralens. It would have been obvious to the artisan of

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ordinary skill to employ a psoralen in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this helps to prevent smooth muscle cells from replicating, thus producing a method such as claimed.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 7,027,869. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

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Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-77 of U.S. Patent No. 6,634,363. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-54 of U.S. Patent No. 6,411,852. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

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Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,299,633. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,283,989. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

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Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,283,988. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,200,333. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

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Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 and 29-32 of U.S. Patent No. 6,083,255. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent anticipate the claims of the application. Accordingly, instant application claims are not patentably distinct from the patent claims. Here, the patent claims require elements A, B, C, and D while instant application claim 1 only requires elements A, B, and C. Thus it is apparent that the more specific patent claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent Application No. 11/614,919. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or

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narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent Application No. 11/612,620. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-25 of U.S. Patent Application No. 11/618,533. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application

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anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent Application No. 11/609,242. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent Application No. 11/608,606. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent Application No. 11/425,345. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require

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elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent Application No. 11/421,444. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent Application No. 11/398,353. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent Application No. 11/408,668. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant

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application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-20 of U.S. Patent Application No. 11/420,442. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26 and 27 of U.S. Patent

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Application No. 11/361,564. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-29 and 32 of U.S. Patent Application No. 11/117,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or

narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent Application No. 10/810,276. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent Application No. 10/809,991. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application

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anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5, 6, 9-11, 17, 18, 21, 22, 24, and 25 of U.S. Patent Application No. 10/640,967. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second

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patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,273,907. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,972,026. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

Claims 50, 52, and 53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-28 of copending Application No. 11/617,512. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 50 and 56 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 11/562,910. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 81-100 of copending Application No. 11/614,914. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/562,925. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-17 of copending Application No. 11/612,620. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/618,533. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-36 of copending Application No. 11/608,606. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/361,564. It would have been obvious to the artisan of ordinary skill to locate the treatment site prior to treatment.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's arguments with respect to claims 29-37, 50, and 52-62 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and

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Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'D. M. Shay', with a stylized flourish at the end.

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330